

BEFORE THE  
BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation against:	)	
	)	
THOMAS STEVEN PODESTA	)	Case No. 867-A
43 Mangels Avenue	)	
San Francisco, CA 94131,	)	
	)	
Civil Engineer License No. C 37028,	)	
	)	
Respondent.	)	
_____	)	

**DECISION**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board for Professional Engineers and Land Surveyors as its Decision in the above-entitled matter, with the following clarification to Condition 8 of the Disciplinary Order.

8. **Ethics Course.** Within two and one-half (2 ½) years from the effective date of this decision, the Respondent shall successfully complete and pass a course in professional ethics, approved in advance by the Board or its designee.

This Decision shall become effective on June 10, 2010.

IT IS SO ORDERED May 5, 2010.

Original Signed  
\_\_\_\_\_  
BOARD FOR PROFESSIONAL ENGINEERS  
AND LAND SURVEYORS  
Department of Consumer Affairs  
State of California

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 MICHAEL B. FRANKLIN  
Deputy Attorney General  
4 State Bar No. 136524  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 703-5622  
6 Facsimile: (415) 703-5480  
*Attorneys for Complainant*  
7

8 **BEFORE THE**  
**BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 867-A

12 **THOMAS STEVEN PODESTA**  
43 Mangels Avenue  
13 San Francisco, CA 94131,

OAH No. 2010010169

14 **Civil Engineer License No. C 37028,**

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

15 Respondent.  
16

17 In the interest of a prompt and speedy settlement of this matter, consistent with the public  
18 interest and the responsibility of the Board for Professional Engineers and Land Surveyors of the  
19 Department of Consumer Affairs, the parties hereby agree to the following Stipulated Settlement  
20 and Disciplinary Order which will be submitted to the Board for approval and adoption as the  
21 final disposition of the Accusation.

22 **PARTIES**

23 1. David E. Brown (Complainant) is the Executive Officer of the Board for Professional  
24 Engineers and Land Surveyors. He brought this action solely in his official capacity and is  
25 represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California,  
26 by Michael B. Franklin, Deputy Attorney General.

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2. Respondent Thomas Steven Podesta (Respondent) is represented in this proceeding by attorney J. Andrew Lawson, whose address is One Embarcadero Center, Suite 2600, San Francisco, CA 94111.

3. On or about July 22, 1983, the Board for Professional Engineers and Land Surveyors issued Civil Engineer License No. C 37028 to Thomas Steven Podesta (Respondent). The Civil Engineer License was in full force and effect at all times relevant to the charges brought in Accusation No. 867-A and will expire on June 30, 2010, unless renewed.

## JURISDICTION

4. Accusation No. 867-A was filed before the Board for Professional Engineers and Land Surveyors (Board) , Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on December 9, 2009. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 867-A is attached as exhibit A and incorporated herein by reference.

## ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 867-A. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

1 CULPABILITY

2 8. Respondent denies the allegations but understands and agrees that the charges and  
3 allegations in Accusation No. 867-A, if proven at a hearing, constitute cause for imposing  
4 discipline upon his Civil Engineer License.

5 9. Without admitting the truth of the allegations, for the purpose of resolving the  
6 Accusation without the expense and uncertainty of further proceedings, Respondent agrees that,  
7 at a hearing, Complainant could establish a factual basis for the charges in the Accusation, and  
8 that Respondent hereby gives up his right to contest those charges.

9 10. Respondent agrees that his Civil Engineer License is subject to discipline and he  
10 agrees to be bound by the Board for Professional Engineers and Land Surveyors (Board)'s  
11 imposition of discipline as set forth in the Disciplinary Order below.

12 RESERVATION

13 11. The agreements made by Respondent herein are only for the purposes of this  
14 proceeding, or any other proceedings in which the Board for Professional Engineers and Land  
15 Surveyors or other professional licensing agency is involved, and shall not be admissible in any  
16 other criminal or civil proceeding.

17 CONTINGENCY

18 12. This stipulation shall be subject to approval by the Board for Professional Engineers  
19 and Land Surveyors. Respondent understands and agrees that counsel for Complainant and the  
20 staff of the Board for Professional Engineers and Land Surveyors may communicate directly with  
21 the Board regarding this stipulation and settlement, without notice to or participation by  
22 Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he  
23 may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board  
24 considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order,  
25 the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this  
26 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not  
27 be disqualified from further action by having considered this matter.

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13. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

15. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

### DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Civil Engineer License No. C 37028 issued to Respondent Thomas Steven Podesta (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

1. **Obey All Laws.** The Respondent shall obey all laws and regulations related to the practices of professional engineering and professional land surveying.

2. **Submit Reports.** The Respondent shall submit such special reports as the Board may require.

3. **Tolling of Probation.** The period of probation shall be tolled during the time the Respondent is practicing exclusively outside the state of California. If, during the period of probation, the Respondent practices exclusively outside the state of California, the Respondent shall immediately notify the Board in writing.

4. **Violation of Probation.** If the Respondent violates the probationary conditions in any respect, the Board, after giving the Respondent notice and the opportunity to be heard, may vacate the stay and reinstate the disciplinary order which was stayed. If, during the period of probation, an accusation or petition to vacate stay is filed against the Respondent, or if the matter

1 has been submitted to the Office of the Attorney General for the filing of such, the Board shall  
2 have continuing jurisdiction until all matters are final, and the period of probation shall be  
3 extended until all matters are final.

4       5.     **Completion of Probation.** Upon successful completion of all of the probationary  
5 conditions and the expiration of the period of probation, the Respondent's license shall be  
6 unconditionally restored.

7       6.     **Cost Recovery.** The Respondent is hereby ordered to reimburse the Board the  
8 amount of \$6,560.00 within two and one-half (2 1/2) years from the effective date of this decision  
9 for its investigative and prosecution costs. Reimbursement may be paid in installments. Failure  
10 to reimburse the Board's cost of its investigation and prosecution shall constitute a violation of  
11 the probation order, unless the Board agrees in writing to payment by an installment plan because  
12 of financial hardship.

13       7.     **Examination.** Within 60 days of the effective date of the decision, the Respondent  
14 shall successfully complete and pass the California Laws and Board Rules examination, as  
15 administered by the Board.

16       8.     **Ethics Course.** The Respondent shall successfully complete and pass a course in  
17 professional ethics, approved in advance by the Board or its designee. The probationary condition  
18 shall include a time period in which this course shall be successfully completed which time period  
19 shall be at least 60 days less than the time period ordered for the period of probation.

20       9.     **Notification.** Within 30 days of the effective date of the decision, the Respondent  
21 shall provide the Board with evidence that he has provided all persons or entities with whom he  
22 has a contractual or employment relationship such that the relationship is in the area of practice of  
23 professional engineering and/or professional land surveying in which the violation occurred with  
24 a copy of the decision and order of the Board and shall provide the Board with the name and  
25 business address of each person or entity required to be so notified. During the period of  
26 probation, the Respondent may be required to provide the same notification of each new person  
27 or entity with whom he has a contractual or employment relationship such that the relationship is  
28 in the area of practice of professional engineering and/or land surveying in which the violation

1 occurred and shall report to the Board the name and address of each person or entity so notified.

2 10. **Take And Pass College-level Course.** Within two and one-half (2 1/2) years from  
3 the effective date of this decision, Respondent shall successfully complete and pass, with a grade  
4 of "C" or better, one (1) college-level civil engineering course, approved in advance by the Board  
5 or its designee. Such course shall be specifically related to the area of violation. For purposes of  
6 this subdivision, "college-level course" shall mean a course offered by a community college or a  
7 four-year university of three semester units or the equivalent; "college-level course" does not  
8 include seminars.

9 ACCEPTANCE

10 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
11 discussed it with my attorney, J. Andrew Lawson. I understand the stipulation and the effect it  
12 will have on my Civil Engineer License. I enter into this Stipulated Settlement and Disciplinary  
13 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order  
14 of the Board for Professional Engineers and Land Surveyors.

15  
16 DATED: 19 APR 10 Original Signed  
17 THOMAS STEVEN PODESTA  
Respondent

18 I have read and fully discussed with Respondent Thomas Steven Podesta the terms and  
19 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.  
20 I approve its form and content.

21 DATED: 4/19/10 Original Signed  
22 J. ANDREW LAWSON  
Attorney for Respondent

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board for Professional Engineers and Land Surveyors of the Department of Consumer Affairs.

Dated: 4/21/10

Respectfully Submitted,

EDMUND G. BROWN JR.  
Attorney General of California  
FRANK H. PACOE  
Supervising Deputy Attorney General

*Original Signed*

MICHAEL B. FRANKLIN  
Deputy Attorney General  
*Attorneys for Complainant*

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1 EDMUND G. BROWN JR.  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 MICHAEL B. FRANKLIN  
Deputy Attorney General  
4 State Bar No. 136524  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 703-5622  
6 Facsimile: (415) 703-5480  
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**BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 867-A

11 **THOMAS STEVEN PODESTA**  
12 43 Mangels Avenue  
San Francisco, CA 94131

**A C C U S A T I O N**

13 **Civil Engineer License No. C 37028,**

14 Respondent.  
15

16 Complainant alleges:

17 **PARTIES**

18 1. David Brown (Complainant) brings this Accusation solely in his official capacity as  
19 the Executive Officer of the Board for Professional Engineers and Land Surveyors, Department  
20 of Consumer Affairs.

21 2. On or about July 22, 1983, the Board for Professional Engineers and Land Surveyors  
22 issued Civil Engineer License Number C 37028 to Thomas Steven Podesta (Respondent). The  
23 Civil Engineer License was in full force and effect at all times relevant to the charges brought  
24 herein and will expire on June 30, 2010, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board for Professional Engineers and Land  
27 Surveyors (Board), Department of Consumer Affairs, under the authority of the following laws.  
28 All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 6775 of the Code states, in pertinent part, that "[T]he board may reprove, suspend for a period not to exceed two years, or revoke the certificate of any professional engineer registered under this chapter:

• • •

(b) Who has been found guilty by the board of any deceit, misrepresentation or fraud in his or her practice.

(c) Who has been found guilty by the board of negligence or incompetence in his or her practice.

...

5. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

## FACTUAL BACKGROUND

6. In or about September 2002, Stephen and Elizabeth Joyce Popper entered into a contract with Elliot Goliger for landscaping work, including the construction of a concrete retaining wall, on their property located at 189 Farnum Street, San Francisco, California. The retaining wall was constructed without permits or engineering and was completed in or about November 2002. Shortly after the completion of the wall, the City of San Francisco Department of Building Inspection (DBI) served a Notice of Violation and required that a new permit be issued that would require inspection and certification of the as-built wall by a licensed civil engineer.

Mr. Goliger hired ASI Consulting Engineers of Millbrae, California (ASI) to prepare the requisite engineering analysis, which was included in Mr. Golliger's revised application submitted to DBI in December 2002 and accepted in April 2003. At least one page of the analysis done by ASI contained Respondent's stamp, though it is unclear when Respondent stamped the document.

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1 On May 10, 2004, Respondent sent a letter to DBI certifying that he “inspected the concrete  
2 wall at 189 Farnum per the special inspection requirements” and that the letter and his stamp  
3 were to satisfy that requirement.

4 On June 22, 2004, Respondent sent a second letter to DBI stating that he “provided  
5 structural observation” of three items, “reinforcing steel and prestressing tendons,” “piling,  
6 drilled piers, and caissons” and “concrete construction.” Respondent also stated that “the  
7 observed structural work was performed in accordance with the approved plans, specifications  
8 and applicable workmanship provisions of the San Francisco Building Code.”

9 On July 2, 2004, Respondent submitted a third letter to DBI providing calculations and  
10 asserting that the “as built wall at 189 Farnum was a “modification of the existing plan set to  
11 read 6" thick concrete wall instead of 8" as drawn.”

12 In summary, Respondent asserted on three separate occasions that he had conducted a  
13 physical inspection of the concrete retaining wall, and that it had been satisfactorily constructed.  
14 There is no evidence, however, that either Respondent or ASI was involved with this project at the  
15 time of construction of the retaining wall in November 2002, nor that that Respondent ever made  
16 a physical inspection to the construction site until June 2006. Moreover, when asked by the  
17 Board in 2006 for his response to a complaint, Respondent could provide no notes or field  
18 reports for this project for any visit to the site. At that time, Respondent also indicated he had no  
19 affiliation with ASI and that his stamp on the sketches and calculations submitted to the City on  
20 ASI letterhead in 2002 were intended for a new retaining wall and not the “as-built” conditions of  
21 the project.

## 22 **FIRST CAUSE FOR DISCIPLINE**

23 (Negligence)

24 7. Respondent is subject to disciplinary action under section 6775(c) in that Respondent  
25 did not use the care ordinarily exercised in like cases by duly licensed professional engineers in  
26 good standing as follows:

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- 1 a. Respondent failed to maintain adequate field records to memorialize any visit(s) to the  
2 project site, particularly when such annotations would have been used as the basis for  
3 certification of compliance with the DBI, as set forth more fully in paragraph 6 above.  
4 b. Respondent failed to inspect this retaining wall at various stages of construction (both  
5 prior to and after the construction) so as to validate conformance of field conditions  
6 with the specified design criteria as set forth more fully in paragraph 6 above.

7 **SECOND CAUSE FOR DISCIPLINE**

8 (Incompetence)

9 8. Respondent is subject to disciplinary action under section 6775(c) in that Respondent  
10 lacked an awareness of whether he was checking for compliance of an existing retaining wall or  
11 designing future construction. Moreover, Respondent did not possess the proper knowledge and  
12 ability in that he certified the retaining wall for compliance without adequate support and basis  
13 and failed to maintain adequate field records to memorialize any visit(s) to the construction site  
14 as set forth more fully in paragraph 6 above.

15 **THIRD CAUSE FOR DISCIPLINE**

16 (Misrepresentation)

17 9. Respondent is subject to disciplinary action under section 6775(b) in that Respondent  
18 misrepresented his assessment of the retaining wall including inspection of the items listed in  
19 Respondent's June 22, 2004 letter to the DBI as the retaining wall was constructed before  
20 Respondent was involved in the project as set forth more fully in paragraph 6 above.

21 **PRAYER**

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
23 and that following the hearing, the Board for Professional Engineers and Land Surveyors issue a  
24 decision:

25 1. Revoking or suspending Civil Engineer License Number C 37028, issued to Thomas  
26 Steven Podesta

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1           2.     Ordering Thomas Steven Podesta to pay the Board for Professional Engineers and  
2 Land Surveyors the reasonable costs of the investigation and enforcement of this case, pursuant  
3 to Business and Professions Code section 125.3;

4           3.     Taking such other and further action as deemed necessary and proper.  
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6  
7 DATED: 11/25/09

Original Signed

DAVID BROWN

Executive Officer

Board for Professional Engineers and Land Surveyors

Department of Consumer Affairs

State of California

*Complainant*

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